

UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON

In re _____) Case No. _____
)
) NOTICE OF MOTION FOR
) RELIEF FROM AUTOMATIC
) STAY IN A CHAPTER 11/12 CASE,
Debtor(s)) AND OF HEARING THEREON

YOU ARE NOTIFIED THAT:

1. A motion was filed by, _____, for the relief from the automatic stay protecting the debtor(s) and debtor's property, as provided by 11 USC §362.
2. The name and address of the moving party's attorney (or moving party, if no attorney) are:
3. If you wish to resist the motion you must, within 14 days of the service date shown below, file a written response with the Clerk of the Bankruptcy Court and, if served in paper, a certificate showing a copy of the response has been served on the moving party's attorney.
4. Contents of Response. A response must state the facts upon which relief from the automatic stay is resisted. See [Local Form #720.50](#) for details.
5. **If you file a timely Response:**

A Hearing on the motion will be held as follows:

Date: _____ **Time:** _____

Location: ☐ Courtroom # _____, _____

- ☐ Telephone Hearing [**NOTE:** See [LBF #888](#), Telephone Hearing Requirements]
Call In Number: (888) 684-8852
Access Code: ☐ 8622907 for Judge Frank R. Alley (fra)
☐ 4950985 for Judge Trish M. Brown (tmb)
☐ 5870400 for Judge Randall L. Dunn (rld)
☐ 1238244 for Judge Peter C. McKittrick (pcm)
☐ 3388495 for Judge Thomas M. Renn (tmr)
☐ Other _____

NO TESTIMONY will be taken at the hearing.

6. **If a timely response is not filed**, then either:
 - a. The court may sign an ex parte order, submitted by the moving party, granting relief from the stay;
 - or b. The stay will expire under the terms of 11 USC §362(e) 30 days after the motion was filed.

CLERK, U.S. BANKRUPTCY COURT
(If filing in paper and if the 5-digit portion of the Case No. begins with "3" or "4", mail to 1001 SW 5th Ave.
#700, Portland OR 97204; or if it begins with "6" or "7", mail to 405 E 8th Ave #2600, Eugene OR 97401)

I certify that on _____ copies of (1) this Notice, (2) [Local Form #720.50](#) if this Notice was served on paper, (3) [Local Form #888](#) if this Notice was served on paper and a Telephone Hearing will be held, and (4) the Motion, were served on the Debtor(s), U.S. Trustee, and on the following parties, if any: Trustee, Creditors' Committee Chairperson, and their respective attorneys.

Signature of Moving Party or Attorney

1 **Timothy J. Conway**, OSB No. 851752 (Lead Attorney)

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2 Facsimile: (503) 972-3727

E-Mail: tim.conway@tonkon.com

3 **Ava L. Schoen**, OSB No. 044072

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4 Facsimile: (503) 972-3843

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5 **TONKON TORP LLP**

1600 Pioneer Tower

6 888 S.W. Fifth Avenue

Portland, OR 97204

7 Attorneys for Debtor

9 UNITED STATES BANKRUPTCY COURT

10 DISTRICT OF OREGON

11 In re

12 Peak Web LLC,

13 Debtor.

Case No. 16-32311-pcm11

**DEBTOR'S OMNIBUS MOTION FOR
RELIEF FROM AUTOMATIC STAY**

15 Pursuant to 11 U.S.C. § 362(d) and Federal Rule of Bankruptcy

16 Procedure 4001, Peak Web LLC ("Debtor") hereby moves for relief from the automatic stay
17 imposed by 11 U.S.C. § 362(a). In support of its motion, Debtor incorporates the statements
18 contained in the Declaration of Mark Calvert of Cascade Capital Group in Support of First
19 Day Motions ("First Day Declaration") [ECF # 20], and further states as follows:

20 1. On June 13, 2016 (the "Petition Date"), Debtor filed a voluntary
21 petition for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy
22 Code").

23 2. Debtor has continued in possession of its property and is continuing to
24 operate and manage its business as debtor-in-possession pursuant to §§ 1107(a) and 1108 of
25 the Bankruptcy Code.

1 3. The Court has jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334.
2 Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core
3 matter pursuant to 28 U.S.C. § 157(b)(2)(G).

4 4. No request has been made for the appointment of a trustee or
5 examiner, and an official committee has not yet been established in this case.

6 5. Debtor is a managed service company that provides the servers,
7 storage, network, datacenter, and staff for some of the largest online businesses. Debtor is
8 essentially a “cloud” service provider for companies that do not want to build out an
9 operations department to run all of these elements themselves.

10 6. As described in the First Day Declaration, Debtor has returned, and
11 continues to return, equipment it no longer requires to certain lessors and lenders. Those
12 lessors and lenders include: Bank of the West, Cisco Capital, CIT Financing, Data Sales,
13 Dell Financial Services, Fort Capital, HP Financial Services, LEAF Leasing, NFS, Presidio
14 Tech Cap, Quail Capital, TFC Leasing, VAR Resources, and Winthrop Capital, including all
15 assignees thereof (together, the “Equipment Recipients”).

16 7. By this Motion, Debtor seeks entry of an order granting the Equipment
17 Recipients relief from the automatic stay to liquidate in a commercially reasonable manner
18 the equipment returned to them by Debtor.

19 8. To the extent an Equipment Recipient believes it has a claim against
20 Debtor after liquidating the returned equipment in a commercially reasonable manner, any
21 such claim shall be timely filed in this Bankruptcy Case.
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1 WHEREFORE, Debtor respectfully requests the entry of an order in the form
2 attached hereto as **Exhibit 1**.

3 DATED this 14th day of June, 2016.

4 TONKON TORP LLP

5
6 By /s/ Ava L. Schoen
7 Timothy J. Conway, OSB No. 851752
8 Ava L. Schoen, OSB No. 044072
9 Attorneys for Debtor
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EXHIBIT 1

PROPOSED FORM OF ORDER

UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON

In re

Peak Web LLC,

Debtor.

Case No. 16-32311-pcm11

**ORDER GRANTING DEBTOR'S
OMNIBUS MOTION FOR RELIEF
FROM AUTOMATIC STAY**

THIS MATTER having come before the Court on Debtor's Omnibus Motion for Relief from Automatic Stay [ECF No. ____] (the "Motion"); and the Court being duly advised in the premises and finding good cause; now, therefore,

IT IS HEREBY ORDERED that:

1. The Motion is granted.
2. The automatic stay of 11 U.S.C. § 362(a) is modified such that Bank of the West, Cisco Capital, CIT Financing, Data Sales, Dell Financial Services, Fort Capital, HP Financial Services, LEAF Leasing, NFS, Presidio Tech Cap, Quail Capital, TFC Leasing, VAR Resources, and Winthrop Capital, including all assignees thereof (together, the "Equipment Recipients") have relief from the stay to liquidate in a commercially reasonable manner any equipment returned to them by Debtor.

**Page 1 of 2 - ORDER GRANTING DEBTOR'S OMNIBUS MOTION FOR RELIEF FROM
AUTOMATIC STAY**

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503-221-1440

3. To the extent an Equipment Recipient believes it has a claim against Debtor after liquidating the returned equipment in a commercially reasonable manner, any such claim must be timely filed in this Bankruptcy Case. To the extent such a claim is filed, it will be treated as provided by the Bankruptcy Code.

4. The provisions of Federal Rule of Bankruptcy Procedure 4001(a)(3) are hereby waived.

#

I certify that I have complied with the requirements of LBR 9021-1(a).

Presented by:

TONKON TORP LLP

By _____
Ava L. Schoen, OSB No. 044072
Timothy J. Conway, OSB No. 851752
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E-mail: ava.schoen@tonkon.com
tim.conway@tonkon.com
Attorneys for Debtor

cc: List of Interested Parties

038470/00001/7302258v1

1 **Timothy J. Conway**, OSB No. 851752 (Lead Attorney)

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Portland, OR 97204

7 Attorneys for Peak Web LLC

8
9 UNITED STATES BANKRUPTCY COURT

10 DISTRICT OF OREGON

11 In re

12 Peak Web LLC,

13 Debtor.

Case No. 16-32311-pcm11

**CERTIFICATE OF SERVICE OF
DEBTOR'S OMNIBUS MOTION FOR
RELIEF FROM AUTOMATIC STAY**

14
15 I hereby certify that on June 14, 2016, I served a copy of Debtor's Omnibus
16 Motion for Relief from Automatic Stay on the parties listed as "Non-ECF" on the attached
17 List of Interested Parties by mailing a copy thereof in a sealed, first-class postage prepaid
18 envelope, addressed to each party's last-known address and depositing in the U.S. mail at
19 Portland, Oregon on the date set forth below.

20 * * *

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26 * * *

1 Those parties listed as "ECF" on the attached List of Interested Parties were
2 served electronically with all above pleadings via the Court's Case Management / Electronic
3 Case File system on June 14, 2016.

4 DATED this 14th day of June, 2016.

5 TONKON TORP LLP

6
7 By /s/ Ava L. Schoen

8 Timothy J. Conway, OSB No. 851752

9 Ava L. Schoen, OSB No. 044072

10 Attorneys for Peak Web LLC
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LIST OF INTERESTED PARTIES

In re Peak Web LLC **U.S. Bankruptcy Court Case No.**

ECF PARTICIPANTS

- AARON J BELL aaron@blf-pc.com, rhonda@blf-pc.com
- TIMOTHY J CONWAY tim.conway@tonkon.com, nancy.kennedy@tonkon.com
- CARLA GOWEN MCCLURG carla.mcclurg@usdoj.gov
- KATHRYN EVANS PERKINS . . .kathryn.e.perkins@usdoj.gov
- AVA L SCHOEN ava.schoen@tonkon.com, nancy.kennedy@tonkon.com
- US Trustee, Portland USTPRegion18.PL.ECF@usdoj.gov

NON-ECF PARTICIPANTS

SECURED CREDITORS:

Bank of the West
180 Montgomery Street
San Francisco, CA 94104
Phone: 415-765-4800
Fax: 925-943-1224

Bank of the West
c/o Aaron J. Bell
Bell Law Firm PC
29100 Town Center Loop W. Ste
200
Wilsonville, OR 97070
Phone: 503-682-8840
Fax: 503 682-9895
Email: aaron@blf-pc.com

TOP 20 UNSECURED CREDITORS:

Themesoft, Inc
13601 Preston Rd, Ste W860
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Phone: 972-474-8787
Fax: 972-474-8888
E-mail: Natalia@themesoft.com

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E-mail: mobelangel@zynga.com

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1211 SW 5th Avenue, #1900
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OTHER:

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Fax: 801-727-0103

Data Sales Co., Inc.
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VP – Credit & Lease Operations
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E-mail: pjohnson@datasales.com

Collins Technology Park Partners, LLC
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Phone: 703-964-4775
Fax: 703-964-4773

ADDITIONAL PARTIES:

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Data Sales Co., Inc.
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Dell Financial Services L.L.C.
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Fort Capital Resources LLC
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Santa Cruz CA 95060

Hewlett Packard Financial
Services
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Berkeley Heights NJ 07922

Leaf Capital Funding, LLC
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NFS Leasing, Inc.
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Presidio Technology Capital, LLC
Two Sun Court
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Quail Capital
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TFC Leasing
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